

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
PETITION FOR
REHEARING
EN BANC**

74-120044AL
74-1296

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P/S

In The
United States Court of Appeals
For The Second Circuit

COALITION FOR EDUCATION IN DISTRICT ONE,
BERTRAM BECK, PEDRO CORDERO, FRANK SUAREZ,
JANE TAM, ERIC SNYDER, LYLE BROWN, GEORGINA
HOGGARD, HENRY RAMOS, RAMONA CALDERON,
FELICITA CLAUDIO, AMELIA OPIO, GLORIA ORTIZ,
BERNARDO RODRIGUEZ, DONATO VELEZ RIVERA,
PETRA SANTIAGO, JUANITA RIVIERA, RAMON
PELIER, et al.,

Plaintiffs-Appellees,

vs.

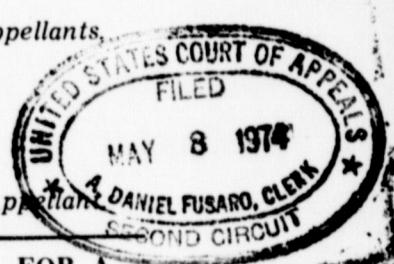
THE BOARD OF ELECTIONS OF THE CITY OF NEW
YORK, GUMERSINDO MARTINEZ, ALICE SACHS,
ELRICH A. EASTMAN, HERBERT J. FEUER, CHARLES
AVARELLO, ELIZABETH CASSIDY, ANTHONY
SADOWSKI, et al.,

Defendants-Appellants,

and

CAROLYN KOZLOWSKY,

Defendant-Appellant DANIEL FUSARO, CLERK
SECOND CIRCUIT



**APPELLANT'S PETITION FOR A REHEARING, FOR A
REHEARING IN BANC AND APPLICATION FOR STAY
OF ELECTION**

JOSEPH P. NAPOLI
Attorney for Defendant-Appellant,
Richard Lee Price
100 Church Street
New York, New York 10007
(212) 732-9000

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs-Appellees,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK,
et al.,

Docket
Nos.
74-1204
74-1296

Defendants-Appellants,

CAROLYN KOZLOWSKY,

Defendant-Appellant.

APPELLANT'S PETITION FOR A REHEARING,
FOR A REHEARING IN BANC AND APPLICATION
FOR STAY OF ELECTION

TO THE HONORABLE JUDGES OF THE UNITED STATES
COURT OF APPEALS, FOR THE SECOND CIRCUIT:

RICHARD LEE PRICE, defendant-appellant herein
above named, respectfully petitions this Court for a
rehearing, for a rehearing in banc and pending the
determination for such relief, respectfully prays for
an order staying the election for members of Community
School Board District One now scheduled for May 14,
1974.

The principal issue involved concerns this Court's decision wherein it stated that:

"Despite the vagaries of proportional representation and the method of tabulation here employed, we must confess most serious doubt that even the several hundred votes that Judge Stewart estimated to be affected by the discriminatory impact of the irregularities could have prevented the election of candidates like Mildworm, Price and Goodman, who made 'quota' with first choice ballots of 1408, 1339 and 1273. . .". (emphasis supplied)

It is appellant's (Richard Lee Price) contention that the District Court's decision to subject him to a new election even though the purported discriminatory impact of the irregularities could not have prevented his election, "was clearly erroneous".

With respect to this issue this Court, in effect, concluded that it had a "definite and firm conviction that a mistake had been committed" especially concerning its conclusion that even if purported discriminatory practices had been avoided, Mr. Price would still have been elected.

This Court further stated:

"In light of these figures, a decree invalidating the election of the two or three lowest scorers and directing a new election to fill their places would seem to have afforded ample relief. But we have also been instructed that, within the bounds of rationality, [t]he framing of decrees should take place in the District rather than in Appellate Courts".
International Salt Co. v. United States, 332 U.S. 392, 400 (1947). See Chance v. Board of Examiners, 458 F.2d 1167, 1178 (2 Cir. 1972); Vulcan Society v. Civil Service Commission, 490 F.2d 387, 399 (2 Cir. 1973).

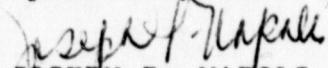
It is appellant's (Richard Lee Price) further contention that this Court should have, based upon its conclusions that Mr. Price would have been elected even if the purported discriminatory practices had been avoided, directed that Mr. Price should not be required to expend the time and monies in a new election.

With respect to the proposition that the framing of the decrees should take place in the District Court, this Court cites International Salt Co. v. United States, 332 U.S. 392, 400 (1947) which was an intricate anti-trust case. The Supreme Court did not preclude the Appellate Courts from amending or modifying a judgment or order of the lower Court which is obviously erroneous.

The new election is scheduled for May 14, 1974 and it is requested that this Court grant the within petition for a rehearing and rehearing in banc, that the holding of said election on said date be stayed.

WHEREFORE, upon the grounds stated above, your petitioner respectfully requests that this Court grant the petition for a rehearing and rehearing in banc and that the orders of the District Court appealed from be, upon further consideration of this Court, reversed.

Respectfully submitted,


JOSEPH P. NAPOLI
Attorney for Appellant
Richard Lee Price

I hereby certify that I have examined the foregoing petition and that in my opinion it is well-founded and entitled to favorable consideration of the Court and that it is not filed for the purpose of delay.

Joseph P. Napoli

JOSEPH P. NAPOLI
Attorney for Appellant,
Richard Lee Price

U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

COALITION FOR EDUCATION IN DIST. #1. et al,

against

BOARD OF ELECTIONS OF N.Y.C.,
Defendants-Appellants.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele,
 deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
 250 West 146th Street, New York, New York
 That on the 8th day of May 1974 at *

deponent served the annexed Petition for Rehearing

upon

*
 the 2
 in this action by delivering a true copy thereof to said individual
 personally. Deponent knew the person so served to be the person mentioned and described in said
 papers as the Attorney(s) herein,

Sworn to before me, this 8th
 day of May 1974

James Steele
 Print name beneath signature

JAMES STEELE

ROBERT T. BRIN
 NOTARY PUBLIC, STATE OF NEW YORK
 NO. 31 - 0418950
 QUALIFIED IN NEW YORK COUNTY
 CERT. NO. 4 EXPIRES MARCH 30, 1975

Robert T. Brin

* Adrian P. Burke-Corp. Counsel-Attorney for Defs.-Applnts. Bd. of Elections and School Bd. Dist. #1-Municipal Bldg., New York,

Joseph Frost-Attorney for Def.-Applnt. Kozlowsky-32 Broadway, New York.

Frederick Sherman-Attorney for Plaintiffs-Appellees-375 Park Avenue, New York

Charles E. Williams, III-Attorney for Plaintiffs-Appellees-10 Columbus Circle, New York

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